

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of

Policies and Rules Implementing
the Telephone Disclosure and
Dispute Resolution Act

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CC Docket No. 93-22
RM-7990

REPLY COMMENTS OF
THE NATIONAL ASSOCIATION FOR INFORMATION SERVICES

The National Association for Information Services ("NAIS") hereby submits the following Reply Comments regarding the above-captioned Notice of Proposed Rulemaking and Notice of Inquiry ("Notice") which was released by the Federal Communications Commission ("Commission") on March 10, 1993. In the Notice, the Commission has proposed various regulations to implement the Telephone Disclosure and Dispute Resolution Act of 1992 ("TDDRA"). Comments on the Commission's proposals were filed on April 19, 1993.

The TDDRA requires that, where technically feasible, local exchange carriers must offer their subscribers "the option of blocking access from their telephone number to ... pay-per-call services"^{1/} This requirement is essentially identical to the Commission's

^{1/} 47 U.S.C. § 228 (c) (4).

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existing blocking rule which requires that "[l]ocal exchange carriers must offer to their subscribers ... an option to block interstate 900 services."^{2/}

Several parties have asked the Commission to clarify that individual states are free to impose additional blocking or presubscription requirements on pay-per-call services.^{3/} The NAIS strongly opposes any such "clarification" on the grounds that it would be inconsistent with the Commission's recent decision to preempt automatic default blocking in South Carolina^{4/} and contrary to the intent of the TDDRA.

In the South Carolina Order, the Commission preempted a Public Service Commission regulation that required South Carolina telephone subscribers to return a ballot to their local exchange carrier if they wished to access 900 services. The Commission found that local exchange carriers cannot determine whether a particular 900 services call is interstate or intrastate and that the South Carolina regulation would "thwart and impede federal policy for access to interstate 900 services."^{5/}

^{2/} 47 C.F.R. § 64.713 (1992).

^{3/} See, e.g., National Association of Attorneys General at 16 ("[T]he FCC [should] characterize the TDDRA rules as minimum requirements for blocking and ... clarify that broader or additional rules imposed by individual states will not be set aside."); South Carolina Telephone Coalition at 6 ("[T]he Commission [should] modify its blocking regulations to allow each local exchange carrier to devise and implement its own blocking and/or presubscription policies..."); and National Association of Consumer Agency Administrators at 8 ("The simplest and most direct solution ... is to require carriers to block pay-per-call services unless consumers affirmatively request access to them.").

^{4/} In the Matter of Petition for an Expedited Declaratory Ruling Filed by National Association For Information Services, Audio Communications, Inc., and Ryder Communications, Inc., Memorandum Opinion and Order, 8 FCC Rcd. 698 (1993) ("South Carolina Order").

^{5/} South Carolina Order at ¶ 18.

Absolutely nothing has changed in the four months since the South Carolina Order was released which would justify a modification of the Commission's preemption policy.^{6/} Moreover, nothing in the TDDRA restricts or repeals the Commission's preemption authority. The TDDRA directs the FCC to "establish a system for oversight and regulation of pay-per-call services in order to provide for the protection of consumers in accordance with this Act and other applicable Federal statutes and regulations."^{7/} In granting this authority, Congress recognized the need for a nationally uniform regulatory framework to govern pay-per-call services:

Audiotext services are inherently an interstate service, and nationwide uniform guidelines and enforcement are necessary to protect consumers inasmuch as no individual State can address the problems created by this industry.^{8/}

^{6/} On February 18, 1993, the Public Service Commission of South Carolina filed a Petition for Reconsideration ("Petition") of the Commission's South Carolina Order. In accordance with a Public Notice released on April 15, 1993 (DA 93-429), the NAIS will address the substantive issues raised in the Petition on May 14, 1993. It is respectfully requested that the NAIS's response to the Petition be incorporated by reference into this proceeding.

^{7/} 47 U.S.C. § 228(b).

^{8/} H.R. Rep. No. 430, 102d Cong., 2d Sess. 9 (1991). The Senate Report acknowledged the "need for legislation at the Federal level to establish uniform standards for the industry, to ensure that consumers have sufficient information prior to calling 900 services, and to provide the FTC, FCC, and the States with the authority needed to protect consumers [sic] interests." S. Rep. No. 190, 102d Cong., 1st Sess. 8 (1991). The House reached a similar conclusion stating that "the lack of nationally uniform guidelines led to confusion for consumers, audiotext providers, and common carriers, particularly as States individually addressed concerns with the abusive practices of pay-per-call businesses." H.R. Rep. No. 430, 102d Cong., 2d Sess. 13 (1991).

Significantly, in deciding to preempt the South Carolina regulation, the Commission specifically considered the requirements of the TDDRA and found that nothing in the Act affected its blocking policy:

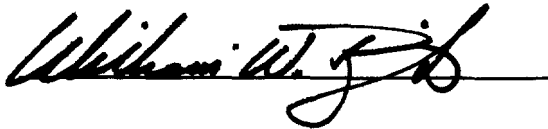
The provisions of the [TDDRA] establishing blocking requirements for [pay-per-call] services are essentially identical to the blocking provisions adopted by the Commission in the 900 Services Order. Neither the statute nor the legislative history reveal any intent to alter the Commission's blocking requirements or policy established in the 900 Services Order. Thus, we conclude that the [TDDRA] does not disturb our policy concerning blocking of interstate 900 services.^{9/}

The Commission should adopt proposed rule Section 64.1508 and reaffirm that individual states may not impose automatic default blocking requirements which conflict with the Commission's blocking rule. This will ensure that consumers have the option to request blocking of pay-per-call services without thwarting the Commission's goal of encouraging the widespread availability of such services.

^{9/} South Carolina Order at ¶ 19, note 48.

Respectfully submitted,

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